



BOARD OF ADJUSTMENT

Approved Minutes



January 23, 2018, 8:30 a.m.
City Council Chambers, 1st Floor, City Hall
101 City Hall Plaza, Durham, NC

I. Call to Order

Chair deLacy called the meeting to order at 8:33 a.m.

II. Roll Call

Members Present:

Fredrick Davis
Regina deLacy, Chair
Randal Rogers
Alisa Thomas
Phillip Harris, Jr.
Jacob Rogers, Alternate
Michael Schietzelt, Alternate

Members Absent:

Najuma Thorpe
Michael Kriston

Staff Present:

Amy Wolff, Planner
Emily Struthers, Planner
Bo Dobrzanski, Planning Supervisor
Joanne Gordon, Clerk
Don O'Toole, City Attorney's Office
Bryan Wardell, County Attorney's Office

III. Adjustments to the Agenda – None

IV. Swearing-In of Witnesses

Chair deLacy asked: Are there any Board members that would have any conflicts of interests with regard to the cases before us today? Chair deLacy then asked if there were any early dismissals. No conflicts of interest were noted.

Chair deLacy read the following statement:

This Board is a quasi-judicial Board of record and, as such, all testimony will be recorded. The proceedings of this Board will be governed by the Unified Development Ordinance, as recorded.

As Chair of the Durham Board of Adjustment, I would like to explain the procedures used for Board hearings. The hearings are quasi-judicial. The process is similar to a court proceeding. First, a staff member of the City-County Planning Department will present an overview of the case. Then the applicant presents its evidence. The opponents, if there are any, will present their evidence. The applicant may then present its rebuttal. Board members are asked to refrain from questions until each speaker has completed his or her presentation. All testimony is given under oath. In a few moments, I will give the oath to all witnesses as a group. All witnesses are asked to sign the roster at the podium if you have not done so.

Testimony should consist of facts each witness knows, not hearsay. All witnesses should come forward to the podium, and identify themselves each time they approach the podium. Speak directly into the microphone so their testimony can be recorded on tape. Before each application, I will read the findings that must be made to approve an application, and any testimony should be relevant to the criteria that the Board uses to determine whether to approve an application.

Any written evidence or exhibits must be presented to the Chair (Vice Chair) and a determination will be made whether it should be accepted. Written evidence or exhibits can be inspected by the opposing party. All evidence, written or oral, or exhibits can be objected to.

Witnesses are subject to cross-examination. Opposing representatives will have an opportunity to question witnesses after all witnesses for the other side have testified. If you wish to cross-examine, you may raise your hand when I ask for other speakers in favor or against the application and I will recognize you. I would also like to remind everyone in attendance to be courteous and ask questions respectfully. If there are numerous people who will be providing the same or similar testimony either for or against an application, in the interest of time, I would request that you please select a representative to present that testimony.

I would like to note that Board members may have visited each site under consideration as part of their preparation for this meeting.

The Board will vote on each case after the presentation of all the evidence, for and against an application, and discussion among themselves concerning the case. North Carolina law requires that in order for an applicant's request to be granted for a City application before the Board, five (5) of the seven (7) voting Board members must approve the request. For a County variance request, North Carolina law requires that in order for an applicant's request to be granted, six (6) of the seven (7) voting Board members must approve the request. For other County requests, including applications for a minor special use permit, four (4) of the seven Board members, or a simple majority, must approve the request.

All decisions of this Board are subject to appeal to the Durham Superior Court. Anyone in the audience, other than the applicant, who wishes to receive a copy of the formal order issued by this Board on a particular case, must submit a written request for a copy of the order at this hearing. Forms for this purpose are available from the City-County Planning Staff.

V. Hearing and Determination of Cases

- 1. Case B1700014** – County: A minor special use permit to allow expansion of an existing place of worship within a residential zoning district. The subject site is located at 1322 Red Mountain Road, is zoned Residential Rural (RR) and in the Rural Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Davis, Mr. Schietzelt, Mr. J. Rogers.

Staff Report: Ms. Wolff presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary.

Speakers: Mr. Ariel Gamboa spoke in support. No one spoke in opposition.

Staff Recommendation: Staff recommends that the Board grant the application with conditions.

MOTION: Mr. J. Rogers made a motion that case **B1700014**, An application for **an expansion of a place of worship** on property located at **1322 Red Mountain Road** has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the site plan, case D1700136, submitted to the Board as part of the application.

(J. Rogers, R. Rogers 2nd)

ACTION: Approved, 7-0

2. **Case B1700045** – City: A Design Special Use Permit to allow for reduced glazing and reduced podium width. The subject site is located at 733 Rutherford Street, is zoned Compact Design- Support 1 (CD-S1) and in the Ninth Street Compact Neighborhood.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Davis, Mr. Schietzelt, Mr. J. Rogers.

Staff Report: Ms. Struthers presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary.

Speakers: Mr. Rob Emmerson, Ms. Ellen Cassilly, Ms. Dee Lutz spoke in support. No one spoke opposition.

Staff Recommendation: Staff recommends that the Board grant the application with conditions.

MOTION: Mr. Schietzelt made a motion that case **B1700045**, An application for a **design special use permit** on property located at **733 Rutherford Street** has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the plans submitted to the Board as part of the application.

(Schietzelt, Harris 2nd)

ACTION: Approved, 7-0

3. **Case B1700046** – City: A Design Special Use Permit to allow for reduced podium height along Foster Street. The subject site is located at 539 Foster Street, is zoned Downtown Design -Core (DD-C) and in the Downtown Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Davis, Mr. Schietzelt, Mr. J. Rogers.

Staff Report: Ms. Struthers presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary.

Speakers: Mr. Ben Grinnell, Mr. John Felton spoke in support. No one spoke in opposition.

Staff Recommendation: Staff recommends that the Board grant the application with conditions.

MOTION: Mr. J. Rogers made a motion that case **B1700046**, An application for a **design special use permit** on property located at **539 Foster Street** has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the plans submitted to the Board as part of the application.

(J. Rogers, R. Rogers 2nd)

ACTION: Approved, 7-0

4. **Case B1700047** – City: A Design Special Use Permit to allow for a build-to line range of 18'-24' from back of curb along Corporation Street and to add a landscape area. The subject site is located at 539 Foster Street, is zoned Downtown Design -Core (DD-C) and in the Downtown Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Davis, Mr. Schietzelt, Mr. J. Rogers.

Staff Report: Ms. Struthers presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary.

Speakers: Mr. Ben Grinnell, Mr. John Felton spoke in support. No one spoke in opposition.

Staff Recommendation: Staff recommends that the Board grant the application with conditions.

Motion: Mr. Schietzelt made a motion that case **B1700047**, an application for a **design special use permit** on property located at **539 Foster Street** has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the plans submitted to the Board as part of the application.

(Schietzelt, J. Rogers 2nd)

Action: Approved, 7-0

5. **Case B1700048** – City: A variance from the required rear yard setback. The subject site is located at 1108 East Main Street, is zoned Commercial General (CG) and in the Compact Neighborhood Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Davis, Mr. Schietzelt, Mr. J. Rogers.

Staff Report: Ms. Wolff presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary,

Speakers: Mr. Ray Watson, Mr. Nick Collins, Ms. Cathy Wilkerson spoke in support. No one spoke in opposition.

Staff Recommendation: Staff recommends that the Board grant the application with conditions.

MOTION: Mr. J. Rogers made a motion that case **B1700048**, an application for **variance from the required rear yard setback** on property located at **1108 East Main Street** has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the site layout submitted to the Board as part of the application.
- The minimum rear yard shall be five feet.

(J. Rogers, Schietzelt 2nd)

ACTION: Approved, 7-0

6. **Case B1700049** – City: A variance from the required side yard setback. The subject site is located at 1108 East Main Street, is zoned Commercial General (CG) and in the Compact Neighborhood Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Davis, Mr. Schietzelt, Mr. J. Rogers.

Staff Report: Ms. Wolff presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary,

Speakers: Mr. Ray Watson, Mr. Nick Collins, Ms. Cathy Wilkerson spoke in support. No one spoke in opposition.

Staff Recommendation: Staff recommends that the Board grant the application with conditions.

MOTION: Mr. R. Rogers made a motion that case **B1700049**, an application for **variance from the required side yard setback** on property located at **1108 East Main Street** has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the site layout submitted to the Board as part of the application.
- The minimum side yard shall be 7.8 feet.

(R. Rogers, J. Rogers 2nd)

ACTION: Approved, 7-0

7. **Case B1700050** – City: A minor special use permit to allow a fence greater than four feet in height in the street yard. The subject site is located at 2654 and 2650 University Drive, is zoned Residential Suburban – 10 (RS-10) and in the Urban Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Davis, Mr. Schietzelt, Mr. J. Rogers.

Staff Report: Ms. Wolff presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary,

Speakers: Mr. John Hykes spoke in support. No one spoke in opposition.

Staff Recommendation: Staff recommends that the Board grant the application with conditions.

MOTION: Mr. J. Rogers made a motion that case **B1700050**, an application to **allow a fence greater than four feet in height in the street yard** on property located at **2654 and 2650 University Drive** has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the site layout submitted to the Board as part of the application.
- The fence height shall be a maximum of eight (8) feet.
- The fence shall be substantially consistent with the fence examples submitted to the Board as part of the application.

(Harris, Davis 2nd)

ACTION: Approved, 7-0

8. **Case B1700051** – City: A variance from the required street yard setback and the required rear yard setback. The subject site is located at 1311 Rosedale Avenue, is zoned Residential Suburban – 10 (RS-10) and in the Urban Tier.

Seated: Mr. Harris, Ms. deLacy, Mr. R. Rogers, Ms. Thomas, Mr. Davis, Mr. Schietzelt, Mr. J. Rogers.

Staff Report: Ms. Wolff presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary.

Speakers: Mr. Matthew Minor, asked question of applicant, after clarifications he was in support of the project.

Staff Recommendation: Staff recommends that the Board grant the application with conditions.

MOTION: Mr. J. Rogers made a motion that case **B1700051**, an application for **a variance from the required street yard setback and required rear yard setback** on property located at **1311 Rosedale Avenue** has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the site layout submitted to the Board as part of the application.

(Schietzelt, Thomas 2nd)

ACTION: Approved, 7-0

VI. Approval of Summary Minutes from December 12, 2017

Motion: Approve the Minutes from December 12, 2017

Action: Motion carried, 7-0 (J. Rogers, R. Rogers 2nd)

VII. Approval of Orders

Case B1700014

Motion: Approve the order for case B1700014 (J. Rogers, Schietzelt 2nd)

Action: Motion carried, 7-0

Case B1700045

Motion: Approve the Order for case B1700045 (J. Rogers, Schietzelt 2nd)

Action: Motion carried, 7-0

Case B1700046

Motion: Approve the Order for case B1700046 (Schietzelt, Harris 2nd 2nd)

Action: Motion carried, 7-0

Case B1700047

Motion: Approve the Order for case B1700047 (Harris, Schietzelt 2nd)

Action: Motion carried, 7-0

Case B1700048

Motion: Approve the Order for case B1700048 (Schietzelt, J. Rogers 2nd).

Action: Motion carried, 7-0

Case B1700049

Motion: Approve the Order for case B1700049 (Schietzelt, Harris 2nd)

Action: Motion carried, 7-0

Case B1700050

Motion: Approve the Order for case B1700050 (Davis, Thomas 2nd)

Action: Motion carried, 7-0

Case B1700051

Motion: Approve the Order for case B1700051 (Schietzelt, Thomas 2nd)

Action: Motion carried, 7-0

VIII. Old Business – None

IX. New Business

a. Closed Session

X. Adjournment

The meeting adjourned at 10:23 a.m.

Respectfully Submitted,
Joanne Gordon, Clerk to the Board